

Swatanter Pal and Others Vs. Swatanter Pal and Others

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Court : Punjab and Haryana

Decided On : Sep-27-2013

Appellant : Swatanter Pal and Others

Respondent : Swatanter Pal and Others

Judgement :

Crl.M.No.M-32678 of 2013(O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.M.No.M-32678 of 2013(O&M) Date of Decision: September 27, 2013
Swatanter Pal and othersPetitioners v Janak and anotherRespondents
CORAM: HON'BLE MR.JUSTICE RAM CHAND GUPTA Present: Mr.Rishu Mahajan, Advocate for the petitioners....RAM CHAND GUPTA, J.(Oral) The present petition filed under Section 438 Cr.P.C.is for grant of anticipatory bail to the petitioners in complaint case No.28, dated 9.2.2011, under Section 3(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (for short the `Act') read with Sections 323, 324, 506 IPC, pending in the Court of Judicial Magistrate Ist Class, Amritsar.

I have heard learned counsel for the petitioners and have gone through the whole record carefully, including the impugned order passed by learned Additional Sessions Judge, Amritsar, vide which application filed on behalf of the present petitioners for anticipatory bail was dismissed.

Brief allegations are that complainant was employed as a domestic servant to clean floor of the house of petitioner no.1 and his shop on monthly salary of `600/-.

She was to get her salary from petitioner no.1- accused when she raised demand.

She was given a push by petitioner no.1 as a result of which she fell in the street.

Petitioner No.2 raised lalkara to teach a lesson to the complainant by saying Is kuti churi noon sade naal panga lain the maja das devo.After uttering these words, petitioners no.1 and 3 brought sotas from the shop.

Petitioner no.1 again proclaimed that Is kuti churi noon Meenu 2013.09.27 17:37 I attest to the accuracy and integrity of this document chandigarh CrI.M.No.M-32678 of 2013(O&M) -2- illaqa wich nahin rahn dehna, ehna kutean churean noon sarkar ne sir charaya hai te aaj is noon pata das dinde han ke kiven high class de lokan naal pange lehinda hai.

Thereafter petitioner no.1 gave her two sota blows which hit on her right leg over right ankle and right calf of the complainant.

Petitioner no.2 held her from her hair and dragged her in the street and uttered the following words:- Hun das kutie churie tere nal ki salook kita jave.

Petitioner no.3 also gave blows which also hit on her right leg.

Petitioner no.1 gave another sota blow which hit on her left leg.

Petitioner no.1 also proclaimed that Tenu kuti churi main kai waar akhiya hai ke ishin paise thale rakhne hain par toon sadi sundi hi nahin.

When complainant raised hue and cry, Kuldeep Singh and Shubh Karan Chawla reached the spot and rescued her from the clutches of the petitioners. accused.

After recording preliminary evidence including statement of Dr. Bhagat Singh, Medical Officer, learned Illaqa Magistrate came to the conclusion that prima facie case for offences under Section 3(x) of the Act and Sections 323, 324, 506 IPC is made out against the petitioners-accused and hence, they were summoned to face trial.

It has been contended by learned counsel for the petitioners-accused that even from bare reading of the complaint, no offence under Section 3(x) is made out.

It is also contended that bail application of the petitioners-accused has been dismissed by learned Additional Sessions Judge merely on the ground that in view of the bar created under Section 18 of the Act, anticipatory bail cannot be granted to them.

He has also placed reliance upon *Gurdeep Singh v.*

State of Punjab 2002 (4) RCR (Criminal) 539; Jagir Chand v.

State of Punjab 2002(4) RCR (Criminal) 445; and Pishora Singh v.

State of Punjab 2002 (2) RCR (Criminal) 215.

As already discussed above, from preliminary evidence recorded by learned trial Court including statement of Medical Officer, Illaqa Magistrate came to the conclusion that prima facie case is made out for offence under Section 3(x) of the Act alongwith other offences vide Meenu 2013.09.27 17:37 I attest to the accuracy and integrity of this document Chandigarh CrI.M.No.M-32678 of 2013(O&M) -3-order dated 23.7.2013.

The occurrence has taken place at a public place and in a public view.

Specific words in the name of caste of complainant have been attributed to the petitioners-accused.

There is no force in the argument of learned counsel for the petitioners-accused that from the perusal of complaint, no case for offence under Section 3(x) of the Act is made out.

Law on the point has been well settled by Hon'ble Apex Court in Swarn Singh and others v.

State through Standing counsel and another 2008(4) RCR (Criminal) 74, that merely uttering of word `Chamar' is sufficient to attract offences under Sections 3 and 4 of the Act, if the same are uttered in public view or at a public place.

Section 18 of the Act creates a bar for granting anticipatory bail to the petitioners-accused, which reads as under: 18.

Section 438 of the Code not to apply to persons committing an offence under the Act.- Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

On the point another judgment of Hon'ble Apex Court rendered in Vilas Pandurang Pawar and another v.

State of Maharashtra and others AIR 2012 SC3316 can be referred, relevant paragraph of which reads as under:- 9.

The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail.

When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out.

Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited.

Court is not expected to indulge in critical analysis of the evidence on record.

When a provision has been enacted in the Special Act to protect the persons who
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chandigarh Crl.M.No.M-32678 of 2013(O&M) -4- belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.

In view of the bar created under Section 18 of the Act, and without expressing any opinion on the merits of the case, the present petition filed by petitioners- Swatanter Pal, Sanjeev Kumar and Dev Dutt Sharma for grant of anticipatory bail is, hereby, dismissed being devoid of any merit.

27.9.2013 (Ram Chand Gupta) meenu Judge Meenu 2013.09.27 17:37 I attest to the accuracy and integrity of this document chandigarh

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